IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

RSA.No. 250 of 2007()

AS.227/2003 of I ADDL.SUB COURT, KOZHIKODE
OS.907/1999 of PRL.M.C.,KOZHIKODE-II
.....

APPELLANT/APPELLANT/DEFENDANT

V.RASOOL GAFOOR, S/O.VALAPPIL BEERAN,
AGED 44 YEARS, P.M.HOUSE, P.O.MEENCHANDA,
PANNIYANKARA AMSOM, DESOM, KOZHIKODE.

BY ADV. SRI.A.A.ABUL HASSAN
SRI.BASMA CHEERAN

RESPONDENT/RESPONDENT/ PLAINTIFF

P.M.ABDULLA HAJI, S/O.SOOPI HAJI, AGED
59 YEARS, PUTHIYA MADATHIL,THURAYOOR AMSOM DESOM,
KOYILANDY TALUK, REPRESENTED BY HIS POWER OF
ATTORNEY K.P.MOIDU, S/O.KUTTIALI, AGED 72 YEARS,
PUNATHIL HOUSE, ERINGATH, THURAYOOR AMSOM, DESOM,
KOYILANDI TALUK, KOZHIKODE DISTRICT.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO. 514/07 IN RSA 250/07

DISMISSED

13/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A.NO. 250 OF 2007

Dated 13th March 2007

J U D G M E N T

Defendant in O.S.907/99 on the file of Munsiff court, Kozhikode-II, is the appellant. Plaintiff therein is the respondent. Appellant was admittedly a monthly tenant of shop room belonging to respondent. Monthly rent payable was Rs.4,000/-. Respondent filed the suit seeking a decree for realisation of arrears of rent contending that appellant defaulted to pay rent from 11/3/1997 till 26/7/1999. Appellant filed a written statement admitting tenancy as well as rate of rent. It was contended that he ceased to occupy the building on 1/3/1997 onwards and respondent declined to take possession of the premises and therefore he is not liable to pay rent claimed in the suit. Learned Munsiff framed necessary issues. On the evidence of Pws.1 and 2, Exts.A1 to A5 on the side of respondents and DW1 and Exts.B1 to B5 on the side of appellant, learned Munsiff found that though appellant contended

that he ceased to occupy building from 1/3/1997, he continued to be a tenant even thereafter and even when respondent filed R.C.P.58/98 claiming eviction, appellant did not surrender the building and contested the case and in such circumstances he is liable to pay arrears of rent claimed in the suit. Learned Munsiff also found that appellant should have sent a notice as provided under Section 106 of Transfer of Properties Act intimating his intention to terminate the tenancy and surrendered possession of the building and therefore he is liable to pay arrears of rent as claimed in the suit. Suit was decreed. Appellant challenged the decree and judgment before Sub court, Kozhikode in A.S.227/2003. Learned Sub Judge on re-appreciation of evidence confirmed the decree and judgment and dismissed the appeal. It is challenged in this second appeal.

2. Learned counsel appearing for appellant was heard. Arguments of learned counsel appearing for appellant was that when Full Bench of this court and Apex court held that notice under Section 106 of Transfer of Properties Act is not necessary to evict a building tenant as provisions of Section 106 of

Transfer of Properties Act is not applicable to proceeding under Kerala Building (Lease and Rent Control) Act, finding of courts below that appellant did not send a notice intimating termination of tenancy under Section 106 of Transfer of Properties Act is unsustainable and courts below should have found that appellant had already surrendered tenancy on 1/3/1997 but key was not accepted by respondent and therefore he is not liable to pay arrears of rent found by the courts below.

3. On going through the judgments of courts below and hearing the learned counsel appearing for appellant, I find no substantial question of law involved in the appeal. Though appellant has raised a contention that he is not liable to pay rent as he ceased to occupy the building from 1/3/1997 and had intimated respondent his intention to surrender and respondent did not receive the key of the shop room and therefore appellant is not liable to pay rent, as rightly found by courts below even when respondent filed R.C.P.58/98 seeking eviction, appellant did not surrender the key before the court. If the case of appellant that he has seized to occupy the building

from 1/3/1997 was true and he did not want to continue in possession of the building he should have surrendered the key before the court immediately on receipt of the notice in the R.C.P or at least on the first posting dat. Instead the key was surrendered only on 26/7/1999 establishing that he continued occupation of the building till then. The very fact that appellant filed an objection in the R.C.P establish that tenancy continued even after 1/3/1997 till 26/7/1999. So long as tenancy continued and building has been under the occupation of appellant, he is liable to pay the agreed rent. As quantum of rent was not disputed, he is liable to pay in arrears of rent claimed in the suit. In such circumstances, findings of courts below that appellant is liable to pay arrears of rent claimed in the suit is perfectly correct. Though learned counsel appearing for appellant vehemently argued that findings of courts below that appellant did not send a notice as provided under Section 106 of Transfer of Properties Act is unsustainable as the Apex Court held that in Rent control proceedings notice under Section 106 of Transfer of Properties Act is not necessary the facts

are entirely different. Kerala Act, 2 of 1965 does not provide a forum for realisation of arrears of rent from a tenant. It only provides for evicting a tenant for failure to pay rent. If a landlord does not want to evict his tenant, the Act does not provide for realisation of arrears of rent due from the tenant. The only mode available to a landlord is to realise the arrears of rent is to institute a suit for arrears of rent. It cannot be said that provisions of Transfer of Properties Act is not applicable in such a suit. No substantial question of law is involved in this appeal.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.